

SEP 7 1979

MICHAEL BOBAK, JR., CLERK

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1979

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**No. 78-1793**  
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**WINFIELD L. ROBERTS,**

*Petitioner,*

v.

**UNITED STATES OF AMERICA,**

*Respondent.*

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**REPLY BRIEF FOR PETITIONER**  
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September 1979

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In its Brief In Opposition the government agrees with Petitioner that the question presented herein is "whether the district court, may consider the defendant's failure to cooperate with the government as a relevant factor in imposing sentence." (Opp. (1)) It further agrees that there is presently a conflict in the circuits on the question presented. (Opp. 5) The Government argues, however, that the two cases holding such sentencing factor improper, predate this Court's holding in *United States v. Grayson*, 438 U.S. 41 (1978), and, that in "light of Grayson's delineation of the district court's sentencing discretion it is reasonable to anticipate a change in the approach of these courts. Ac-

cordingly, there is no need at present to address the divergence among the lower courts." (Opp. 5)

One of the circuits that was supposed to see the light is the Second Circuit which held such sentencing factor improper prior to *Grayson*, in *United States v. Ramos*, 572 F.2d 360 (2d Cir. 1978). The Second Circuit however, contrary to the Government's expectations, has recently adhered to its earlier holding and still finds such sentencing factor improper. *Di Giovanni v. United States*, 596 F.2d 74 (2d Cir. 1979). Reason to grant the writ prayed for is now stronger than ever in order to resolve this nondisappearing conflict in the circuits.<sup>1</sup>

Respectfully submitted,

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<sup>1</sup>*Di Giovanni* did not appear in the advance sheets until June 25, 1979, and our original petition was filed on May 30, 1979. We did not come across this case until September 3, 1979, and apparently it was overlooked by the government which filed its opposition herein on July 17, 1979.